

AMENDED IN ASSEMBLY MAY 8, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 888

Introduced by Assembly Member Dickinson

February 22, 2013

An act to amend Section 17206 of, and to add Section ~~6026.6~~ 6126.6 to, the Business and Professions Code, relating to the State Bar.

LEGISLATIVE COUNSEL'S DIGEST

AB 888, as amended, Dickinson. State Bar of California: enforcement actions.

(1) Existing law prohibits a person from practicing law in California, or from advertising or holding himself or herself out as practicing law, unless the person is an active member of the State Bar, or otherwise authorized, as specified, to practice law in this state. A violation of these provisions is a crime.

This bill would, for violations of any of these of the above-described provisions, require the State Bar to disclose, in confidence, the information in its investigation *to the agency responsible for the criminal enforcement of these provisions* or exchange that information with the ~~agency responsible for the criminal enforcement of those provisions.~~ *that agency*. This bill would authorize the State Bar to request that the Attorney General, a district attorney, or a city attorney acting as a local prosecutor, *to bring an enforcement action, as specified, action* or bring a civil action in its own name, as specified. ~~The bill would require that the court, in a civil enforcement action by the State Bar, impose and consider specified remedies, including, but not limited to, specified~~

~~civil penalties to be paid to the State Bar, and specified penalties for any intentional violation of any injunction prohibiting the unlawful practice of law, as specified, to be paid to the State Bar. The bill would require the court, in a civil enforcement action by the State Bar for the unlawful practice of law, to impose a civil penalty not to exceed \$2,500, to be paid to the State Bar. The bill would also require the court to impose a civil penalty not to exceed \$6,000 for the intentional violation of any injunction prohibiting the unlawful practice of law. The bill would specify that if the conduct constituting the intentional violation is of a continuing nature, each day of that conduct shall be deemed a separate and distinct violation. The bill would, in determining the amount of the civil penalty to be assessed for these violations, require the court to consider any relevant circumstances, as specified. The bill would also require the court to consider, when applicable, additional relief provided under existing law and to award reasonable attorney's fees and costs, as specified.~~

~~(2) Existing law makes any person who engages, has engaged, or proposes to engage in unfair competition, liable for a civil penalty not to exceed \$2,500 for each violation, which must be assessed and recovered in a civil action brought in the name of the people of the State of California by any of specified persons, in any court of competent jurisdiction: a person who engages in unfair competition, as defined, liable for a civil penalty not to exceed \$2,500 dollars for each violation and requires that this penalty be assessed and recovered in a civil action brought in the name of the people of the State of California by specified persons in any court of competent jurisdiction. Existing law requires, if the action is requires a court, for an unfair competition action brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, that the court to determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action: action, and provides for the reimbursement of these expenses, as specified.~~

~~This bill would also require, if the action is similarly require the court, for an action brought at the request of the State Bar of California, that the court to determine the reasonable expenses incurred by the State Bar in the investigation and prosecution of the action and require the amount of those expenses be paid to the State Bar to fund its investigation and enforcement of specified provisions and provide for the reimbursement of these expenses.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section ~~6026.6~~ 6126.6 is added to the Business and Professions Code, to read:

~~6026.6.~~

6126.6. (a) For violations of Sections 6125 and 6126, the State Bar shall disclose, in confidence, the information in its investigation *to the agency responsible for the criminal enforcement of the provisions of this article* or exchange that information ~~with the agency responsible for the criminal enforcement of the provisions of this article.~~ *that agency.* The State Bar may request the Attorney General, a district attorney, or a city attorney acting as a local prosecutor, to bring an enforcement action under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7, or the State Bar may bring a civil action in its own name, as provided in Section 6030, *for any violation of Section 6125 or 6126.*

(b) In a civil enforcement action brought by the State Bar, in addition to the remedies and relief available in Section 6030 and subdivision (e) of Section 6126.3, the court shall:

(1) ~~Impose a civil penalties specified in Section 17206, penalty in an amount not to exceed two thousand five hundred dollars (\$2,500) for each violation of Section 6125 or 6126, to be paid to the State Bar.~~ *In determining the amount of the civil penalty to be assessed, the court shall consider any relevant circumstances presented by any of the parties to the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.*

(2) ~~Impose penalties for any a civil penalty for the intentional violation of any injunction prohibiting the unlawful practice of law, as specified in Section 17207, in an amount not to exceed six thousand dollars (\$6,000) for each violation, to be paid to the State Bar.~~ *If the conduct constituting the violation is of a continuing nature, each day of that conduct shall be deemed a separate and*

1 *distinct violation. In determining the amount of the civil penalty*
2 *to be assessed, the court shall consider any relevant circumstances,*
3 *including, but not limited to, the extent of the harm caused by the*
4 *conduct constituting a violation, the nature and persistence of the*
5 *conduct, the length of time over which the conduct occurred, the*
6 *defendant's assets, liabilities, and net worth, and any corrective*
7 *action taken by the defendant.*

8 (3) Consider, when applicable, the relief available in paragraphs
9 (1) to (6), inclusive, of subdivision (a) of Section 6126.5.

10 (4) Award to the State Bar reasonable attorney's fees and costs
11 and, in the court's discretion, exemplary damages as provided in
12 Section 3294 of the Civil Code.

13 SEC. 2. Section 17206 of the Business and Professions Code
14 is amended to read:

15 17206. Civil Penalty for Violation of Chapter

16 (a) Any person who engages, has engaged, or proposes to engage
17 in unfair competition shall be liable for a civil penalty not to exceed
18 two thousand five hundred dollars (\$2,500) for each violation,
19 which shall be assessed and recovered in a civil action brought in
20 the name of the people of the State of California by the Attorney
21 General, by any district attorney, by any county counsel authorized
22 by agreement with the district attorney in actions involving
23 violation of a county ordinance, by any city attorney of a city
24 having a population in excess of 750,000, by any city attorney of
25 any city and county, or, with the consent of the district attorney,
26 by a city prosecutor in any city having a full-time city prosecutor,
27 in any court of competent jurisdiction.

28 (b) The court shall impose a civil penalty for each violation of
29 this chapter. In assessing the amount of the civil penalty, the court
30 shall consider any one or more of the relevant circumstances
31 presented by any of the parties to the case, including, but not
32 limited to, the following: the nature and seriousness of the
33 misconduct, the number of violations, the persistence of the
34 misconduct, the length of time over which the misconduct occurred,
35 the willfulness of the defendant's misconduct, and the defendant's
36 assets, liabilities, and net worth.

37 (c) If the action is brought by the Attorney General, one-half of
38 the penalty collected shall be paid to the treasurer of the county in
39 which the judgment was entered, and one-half to the General Fund.
40 If the action is brought by a district attorney or county counsel,

1 the penalty collected shall be paid to the treasurer of the county in
2 which the judgment was entered. Except as provided in subdivision
3 (e), if the action is brought by a city attorney or city prosecutor,
4 one-half of the penalty collected shall be paid to the treasurer of
5 the city in which the judgment was entered, and one-half to the
6 treasurer of the county in which the judgment was entered. The
7 aforementioned funds shall be for the exclusive use by the Attorney
8 General, the district attorney, the county counsel, and the city
9 attorney for the enforcement of consumer protection laws.

10 (d) The Unfair Competition Law Fund is hereby created as a
11 special account within the General Fund in the State Treasury. The
12 portion of penalties that is payable to the General Fund or to the
13 Treasurer recovered by the Attorney General from an action or
14 settlement of a claim made by the Attorney General pursuant to
15 this chapter or Chapter 1 (commencing with Section 17500) of
16 Part 3 shall be deposited into this fund. Moneys in this fund, upon
17 appropriation by the Legislature, shall be used by the Attorney
18 General to support investigations and prosecutions of California's
19 consumer protection laws, including implementation of judgments
20 obtained from such prosecutions or investigations and other
21 activities which are in furtherance of this chapter or Chapter 1
22 (commencing with Section 17500) of Part 3. Notwithstanding
23 Section 13340 of the Government Code, any civil penalties
24 deposited in the fund pursuant to the National Mortgage Settlement,
25 as provided in Section 12531 of the Government Code, are
26 continuously appropriated to the Department of Justice for the
27 purpose of offsetting General Fund costs incurred by the
28 Department of Justice.

29 (e) If the action is brought at the request of a board within the
30 Department of Consumer Affairs, a local consumer affairs agency,
31 or the State Bar of California, the court shall determine the
32 reasonable expenses incurred by the board, local agency, or the
33 State Bar in the investigation and prosecution of the action.

34 Before any penalty collected is paid out pursuant to subdivision
35 (c), the amount of any reasonable expenses incurred by the board
36 shall be paid to the Treasurer for deposit in the special fund of the
37 board described in Section 205. If the board has no such special
38 fund, the moneys shall be paid to the Treasurer. The amount of
39 any reasonable expenses incurred by a local consumer affairs
40 agency shall be paid to the general fund of the municipality or

1 county that funds the local agency. The amount of any reasonable
2 expenses incurred by the State Bar shall be paid to the State Bar
3 to fund its investigation and enforcement of Sections 6125 and
4 6126.

5 (f) If the action is brought by a city attorney of a city and county,
6 the entire amount of the penalty collected shall be paid to the
7 treasurer of the city and county in which the judgment was entered
8 for the exclusive use by the city attorney for the enforcement of
9 consumer protection laws. However, if the action is brought by a
10 city attorney of a city and county for the purposes of civil
11 enforcement pursuant to Section 17980 of the Health and Safety
12 Code or Article 3 (commencing with Section 11570) of Chapter
13 10 of Division 10 of the Health and Safety Code, either the penalty
14 collected shall be paid entirely to the treasurer of the city and
15 county in which the judgment was entered or, upon the request of
16 the city attorney, the court may order that up to one-half of the
17 penalty, under court supervision and approval, be paid for the
18 purpose of restoring, maintaining, or enhancing the premises that
19 were the subject of the action, and that the balance of the penalty
20 be paid to the treasurer of the city and county.